

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Orthopedic Associates of 65 Pennsylvania Avenue,
Binghamton, New York, P.C., as Plan Administrator of the
Orthopedic Associates Defined Contribution Pension Plan,
Plaintiff,

**Civil No. 3:00-CV-238
(GLS/DEP)
(Lead Case)**

v.

Robert M. Sedor, Jr., CFP, RFC, Upstate Management
Associates, Inc., doing business as The Bay Ridge Group
and Norah A. Breen,

Defendants.

Robert W. Milgram, M.D.,

Plaintiff,

**Civil No. 3:02-CV-255
(GLS/DEP)
(Member Case)**

v.

Orthopedic Associates of 65 Pennsylvania Avenue,
Binghamton, New York, P.C., as Plan Administrator of the
Orthopedic Associates Defined Contribution Pension Plan;
Orthopedic Associates Defined
Contribution Pension Plan; Robert M. Sedor, Jr., CFP, RFC,
Upstate Management Associates, Inc., d/b/a The Bay Ridge
Group; Michael McClure, M.D.; Charles W. Carpenter, M.D.,
Kamlesh S. Desai, M.D.; Laurence U. Schenk, M.D.;
Douglas R. Kerr, M.D. and Norah H. Breen,

Defendants.

ORDER AND JUDGMENT

Robert W. Milgram, M.D., Plaintiff in the Member Case ("Plaintiff"), moved for partial summary judgment on his claim against the Orthopedic Associates Defined Contribution Pension Plan, one of the Defendants in the Member Case ("Defendant"), to recover benefits due him in the amount of \$763,847.93 pursuant to U.S.C.A. §1132(a)(1)(B), and this Court has reviewed all of the papers, exhibits and memoranda of law submitted by the parties, and has heard oral argument from their attorneys with respect to Plaintiff's Motion for Summary Judgment on February 2, 2006 and May 22, 2006.


The Court hereby finds that Plaintiff's May 19, 1997 distribution from the Orthopedic Associates Defined Contribution Pension Plan was underfunded in the amount of \$763,847.93.

Accordingly, it is hereby,

ORDERED, ADJUDGED AND DECREED, that the Orthopedic Associates Defined Contribution Pension Plan restore to an account for the benefit of Robert W. Milgram, M.D. within said plan the sum of \$763,847.93 as of the date of Entry of this Order and Judgment.

The Court reserves judgment with respect to the accrual of any pre-judgment interest or earnings on said amount prior to the date of entry of this Order and Judgment.

It is hereby further found that a payment in the amount of \$763,847.93 may be made to the Plan as a payment to restore losses to the Plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of a fiduciary duty under Title I of the Employee Retirement Income Security Act of 1974 and that such risk of liability relates directly to the underfunding of Dr. Milgram's distribution on May 19, 1997 in the amount of \$763,847.93.



HON. GARY L. SHARPE
UNITED STATES DISTRICT COURT

Dated: August 24, 2006
Albany, New York